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6 MILLESON AND JOSE QUINONES

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
10

11 JOSEPH DAVIS, an individual,
12 Plaintiff,
13 v.
14

15 RAYMOND, ROSAS, an individual;
JESSE CARDELLA, an individual;
16 GERARDO DIAZ, an individual;
CORY MILLESON, an individual;
JOSE QUINONES, an individual; and
17 DOES 1-10,
18 Defendants.
19

Case No. 2:24-cv-02165-AB-DFM
Hon. Andre Birotte, Jr.
Hon. Douglas F. McCormick

PROTECTIVE ORDER

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22 **I. PURPOSES AND LIMITATIONS**

23 A. Discovery in this action is likely to involve production of confidential,
24 proprietary, or private information for which special protection from public
25 disclosure and from use for any purpose other than prosecuting this litigation
26 may be warranted. Accordingly, the parties hereby stipulate to and petition
27 the Court to enter the following Stipulated Protective Order. The parties
28 acknowledge that this Order does not confer blanket protections on all

disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section XIII(C), below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

II. GOOD CAUSE STATEMENT

This action involves Plaintiff Joseph Davis (“Plaintiff”) and Alhambra Police Department (“APD”) Officers Brandon Cardella, Gerardo Diaz, Cory Milleson, and Jose Quinones (collectively “Officer Defendants”). Plaintiff is seeking materials and information the City of Alhambra (“City”) maintains as confidential, such as officer body worn video recordings, audio recordings and materials, personnel records and other administrative materials and information currently in the possession of the City which Defendants believe need special protection from public disclosure and from use for any purpose other than prosecuting this litigation.

Defendants assert that the confidentiality of the materials and information sought by Plaintiff is recognized by California and federal law, as evidenced *inter alia* by California Penal Code section 832.7 and *Kerr v. United States Dist. Ct.* for N.D. Cal., 511 F.2d 192, 198 (9th Cir. 1975), *aff’d*, 426 U.S. 394 (1976). The City has not publicly released the materials and information referenced above. These materials and information are of the type that have been used to initiate disciplinary action against APD officers and has been used as evidence in disciplinary proceedings where the officers’ conduct was considered to be contrary to APD policy.

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1 Defendants contend that absent a protective order delineating the
2 responsibilities of nondisclosure on the part of the parties hereto, there is a specific
3 risk of unnecessary and undue disclosure by one or more of the many attorneys,
4 secretaries, law clerks, paralegals and expert witnesses involved in this case, as well
5 as the corollary risk of embarrassment, harassment as well as professional, physical
6 and legal harm on the part of the APD officers referenced in the materials and
7 information.

8 Defendants also contend that the unfettered disclosure of the materials and
9 information, absent a protective order, would allow the media to share this
10 information with potential jurors in the area, impacting the rights of the Defendants
11 herein to receive a fair trial.

12 Accordingly, to expedite the flow of information, to facilitate the prompt
13 resolution of disputes over confidentiality of discovery materials, to adequately
14 protect information the parties are entitled to keep confidential, to ensure that the
15 parties are permitted reasonable necessary uses of such material in preparation for
16 and in the conduct of trial, to address their handling at the end of the litigation, and
17 serve the ends of justice, a protective order for such information is justified in this
18 matter. It is the intent of the parties that information will not be designated as
19 confidential for tactical reasons and that nothing be so designated without a good
20 faith belief that it has been maintained in a confidential, non-public manner, and
21 there is good cause why it should not be part of the public record of this case. This
22 also includes (1) any information copied or extracted from the Confidential
23 information; (2) copies, excerpts, summaries or compilations of Confidential
24 information; and (3) any testimony, conversations, or presentations that might reveal
25 Confidential information.

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1 **III. DEFINITIONS**

- 2 A. Action: This pending federal law suit.
- 3 B. Challenging Party: A Party or Non-Party that challenges the
- 4 designation of information or items under this Order.
- 5 C. “CONFIDENTIAL” Information or Items: Information (regardless of
- 6 how it is generated, stored or maintained) or tangible things that qualify
- 7 for protection under Federal Rule of Civil Procedure 26(c), and as
- 8 specified above in the Good Cause Statement. This also includes (1)
- 9 any information copied or extracted from the Confidential information;
- 10 (2) copies, excerpts, summaries or compilations of Confidential
- 11 information; and (3) any testimony, conversations, or presentations that
- 12 might reveal Confidential information.
- 13 D. Counsel: Outside Counsel of Record and House Counsel (as well as
- 14 their support staff).
- 15 E. Designating Party: A Party or Non-Party that designates information or
- 16 items that it produces in disclosures or in responses to discovery as
- 17 “CONFIDENTIAL.”
- 18 F. Disclosure or Discovery Material: All items or information, regardless
- 19 of the medium or manner in which it is generated, stored, or maintained
- 20 (including, among other things, testimony, transcripts, and tangible
- 21 things), that are produced or generated in disclosures or responses to
- 22 discovery in this matter.
- 23 G. Expert: A person with specialized knowledge or experience in a matter
- 24 pertinent to the litigation who has been retained by a Party or its
- 25 counsel to serve as an expert witness or as a consultant in this Action.
- 26 H. House Counsel: Attorneys who are employees of a party to this Action.
- 27 House Counsel does not include Outside Counsel of Record or any
- 28 other outside counsel.

- 1 I. Non-Party: Any natural person, partnership, corporation, association,
 2 or other legal entity not named as a Party to this action.
- 3 J. Outside Counsel of Record: Attorneys who are not employees of a
 4 party to this Action but are retained to represent or advise a party to this
 5 Action and have appeared in this Action on behalf of that party or are
 6 affiliated with a law firm which has appeared on behalf of that party,
 7 and includes support staff.
- 8 K. Party: Any party to this Action, including all of its officers, directors,
 9 employees, consultants, retained experts, and Outside Counsel of
 10 Record (and their support staffs).
- 11 L. Producing Party: A Party or Non-Party that produces Disclosure or
 12 Discovery Material in this Action.
- 13 M. Professional Vendors: Persons or entities that provide litigation
 14 support services (e.g., photocopying, videotaping, translating, preparing
 15 exhibits or demonstrations, and organizing, storing, or retrieving data in
 16 any form or medium) and their employees and subcontractors.
- 17 N. Protected Material: Any Disclosure or Discovery Material that is
 18 designated as “CONFIDENTIAL.”
- 19 O. Receiving Party: A Party that receives Disclosure or Discovery
 20 Material from a Producing Party.

21 22 IV. SCOPE

- 23 A. The protections conferred by this Stipulation and Order cover not only
 24 Protected Material (as defined above), but also (1) any information copied or
 25 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 26 compilations of Protected Material; and (3) any testimony, conversations, or
 27 presentations by Parties or their Counsel that might reveal Protected Material.
- 28 B. Any use of Protected Material at trial shall be governed by the orders of

1 the trial judge. This Order does not govern the use of Protected Material at
 2 trial.

3
 4 **V. DURATION**

5 A. Even after final disposition of this litigation, the confidentiality
 6 obligations imposed by this Order shall remain in effect until a Designating
 7 Party agrees otherwise in writing or a court order otherwise directs. Final
 8 disposition shall be deemed to be the later of (1) dismissal of all claims and
 9 defenses in this Action, with or without prejudice; and (2) final judgment
 10 herein after the completion and exhaustion of all appeals, rehearings,
 11 remands, trials, or reviews of this Action, including the time limits for filing
 12 any motions or applications for extension of time pursuant to applicable law.
 13

14 **VI. DESIGNATING PROTECTED MATERIAL**

15 A. Exercise of Restraint and Care in Designating Material for Protection

- 16 1. Each Party or Non-Party that designates information or items
 17 for protection under this Order must take care to limit any such
 18 designation to specific material that qualifies under the appropriate
 19 standards. The Designating Party must designate for protection only
 20 those parts of material, documents, items, or oral or written
 21 communications that qualify so that other portions of the material,
 22 documents, items, or communications for which protection is not
 23 warranted are not swept unjustifiably within the ambit of this Order.
- 24 2. Mass, indiscriminate, or routinized designations are prohibited.
 25 Designations that are shown to be clearly unjustified or that have been
 26 made for an improper purpose (e.g., to unnecessarily encumber the case
 27 development process or to impose unnecessary expenses and burdens
 28 on other parties) may expose the Designating Party to sanctions.

1 3. If it comes to a Designating Party's attention that information or
2 items that it designated for protection do not qualify for protection, that
3 Designating Party must promptly notify all other Parties that it is
4 withdrawing the inapplicable designation.

5 B. Manner and Timing of Designations

6 1. Except as otherwise provided in this Order (*see, e.g.*, Section
7 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or
8 Discovery Material that qualifies for protection under this Order must
9 be clearly so designated before the material is disclosed or produced.

10 2. Designation in conformity with this Order requires the following:

11 a. For information in documentary form (e.g., paper or
12 electronic documents, but excluding transcripts of depositions or
13 other pretrial or trial proceedings), that the Producing Party affix
14 at a minimum, the legend "CONFIDENTIAL" (hereinafter
15 "CONFIDENTIAL legend"), to each page that contains
16 protected material. If only a portion or portions of the material
17 on a page qualifies for protection, the Producing Party also must
18 clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins).

20 b. A Party or Non-Party that makes original documents
21 available for inspection need not designate them for protection
22 until after the inspecting Party has indicated which documents it
23 would like copied and produced. During the inspection and
24 before the designation, all of the material made available for
25 inspection shall be deemed "CONFIDENTIAL." After the
26 inspecting Party has identified the documents it wants copied and
27 produced, the Producing Party must determine which documents,
28 or portions thereof, qualify for protection under this Order.

1 Then, before producing the specified documents, the Producing
 2 Party must affix the “CONFIDENTIAL legend” to each page
 3 that contains Protected Material. If only a portion or portions of
 4 the material on a page qualifies for protection, the Producing
 5 Party also must clearly identify the protected portion(s) (e.g., by
 6 making appropriate markings in the margins).

7 c. For testimony given in depositions, that the Designating
 8 Party identify the Disclosure or Discovery Material on the
 9 record, before the close of the deposition all protected testimony.

10 d. For information produced in form other than document
 11 and for any other tangible items, that the Producing Party affix in
 12 a prominent place on the exterior of the container or containers
 13 in which the information is stored the legend
 14 “CONFIDENTIAL.” If only a portion or portions of the
 15 information warrants protection, the Producing Party, to the
 16 extent practicable, shall identify the protected portion(s).

17 C. Inadvertent Failure to Designate

18 1. If timely corrected, an inadvertent failure to designate qualified
 19 information or items does not, standing alone, waive the Designating
 20 Party’s right to secure protection under this Order for such material.
 21 Upon timely correction of a designation, the Receiving Party must
 22 make reasonable efforts to assure that the material is treated in
 23 accordance with the provisions of this Order.

24
 25 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 A. Timing of Challenges

27 1. Any party or Non-Party may challenge a designation of
 28 confidentiality at any time that is consistent with the Court’s

1 Scheduling Order.

2 B. Meet and Confer

3 1. The Challenging Party shall initiate the dispute resolution
4 process under Local Rule 37.1 et seq.

5 C. The burden of persuasion in any such challenge proceeding shall be on
6 the Designating Party. Frivolous challenges, and those made for an improper
7 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
8 parties) may expose the Challenging Party to sanctions. Unless the
9 Designating Party has waived or withdrawn the confidentiality designation,
10 all parties shall continue to afford the material in question the level of
11 protection to which it is entitled under the Producing Party's designation until
12 the Court rules on the challenge.

13
14 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 A. Basic Principles

16 1. A Receiving Party may use Protected Material that is disclosed
17 or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this
19 Action. Such Protected Material may be disclosed only to the
20 categories of persons and under the conditions described in this Order.
21 When the Action has been terminated, a Receiving Party must comply
22 with the provisions of Section XIV below.

23 2. Protected Material must be stored and maintained by a Receiving
24 Party at a location and in a secure manner that ensures that access is
25 limited to the persons authorized under this Order.

26 B. Disclosure of "CONFIDENTIAL" Information or Items

27 1. Unless otherwise ordered by the Court or permitted in writing by
28 the Designating Party, a Receiving Party may disclose any information

1 or item designated “CONFIDENTIAL” only to:

- 2 a. The Receiving Party’s Outside Counsel of Record in this
3 Action, as well as employees of said Outside Counsel of Record
4 to whom it is reasonably necessary to disclose the information
5 for this Action;
- 6 b. The officers, directors, and employees (including House
7 Counsel) of the Receiving Party to whom disclosure is
8 reasonably necessary for this Action;
- 9 c. Experts (as defined in this Order) of the Receiving Party to
10 whom disclosure is reasonably necessary for this Action and who
11 have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A);
- 13 d. The Court and its personnel;
- 14 e. Court reporters and their staff;
- 15 f. Professional jury or trial consultants, mock jurors, and
16 Professional Vendors to whom disclosure is reasonably
17 necessary for this Action and who have signed the
18 “Acknowledgment and Agreement to be Bound” attached as
19 Exhibit A hereto;
- 20 g. The author or recipient of a document containing the
21 information or a custodian or other person who otherwise
22 possessed or knew the information;
- 23 h. During their depositions, witnesses, and attorneys for
24 witnesses, in the Action to whom disclosure is reasonably
25 necessary provided: (i) the deposing party requests that the
26 witness sign the “Acknowledgment and Agreement to Be
27 Bound;” and (ii) they will not be permitted to keep any
28 confidential information unless they sign the “Acknowledgment

and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the

1 Court from which the subpoena or order issued, unless the Party has obtained
 2 the Designating Party's permission. The Designating Party shall bear the
 3 burden and expense of seeking protection in that court of its confidential
 4 material and nothing in these provisions should be construed as authorizing or
 5 encouraging a Receiving Party in this Action to disobey a lawful directive
 6 from another court.

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 8 **X. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
 9 **PRODUCED IN THIS LITIGATION**

10 A. The terms of this Order are applicable to information produced by a
 11 Non-Party in this Action and designated as "CONFIDENTIAL." Such
 12 information produced by Non-Parties in connection with this litigation is
 13 protected by the remedies and relief provided by this Order. Nothing in these
 14 provisions should be construed as prohibiting a Non-Party from seeking
 15 additional protections.

16 B. In the event that a Party is required, by a valid discovery request, to
 17 produce a Non-Party's confidential information in its possession, and the
 18 Party is subject to an agreement with the Non-Party not to produce the Non-
 19 Party's confidential information, then the Party shall:

- 20 1. Promptly notify in writing the Requesting Party and the Non-
 21 Party that some or all of the information requested is subject to a
 22 confidentiality agreement with a Non-Party;
- 23 2. Promptly provide the Non-Party with a copy of the Stipulated
 24 Protective Order in this Action, the relevant discovery request(s), and a
 25 reasonably specific description of the information requested; and
- 26 3. Make the information requested available for inspection by the
 27 Non-Party, if requested.

28 C. If the Non-Party fails to seek a protective order from this court within

1 14 days of receiving the notice and accompanying information, the Receiving
 2 Party may produce the Non-Party's confidential information responsive to the
 3 discovery request. If the Non-Party timely seeks a protective order, the
 4 Receiving Party shall not produce any information in its possession or control
 5 that is subject to the confidentiality agreement with the Non-Party before a
 6 determination by the court. Absent a court order to the contrary, the Non-
 7 Party shall bear the burden and expense of seeking protection in this court of
 8 its Protected Material.
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10 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

11 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
 12 disclosed Protected Material to any person or in any circumstance not
 13 authorized under this Stipulated Protective Order, the Receiving Party must
 14 immediately (1) notify in writing the Designating Party of the unauthorized
 15 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
 16 Protected Material, (3) inform the person or persons to whom unauthorized
 17 disclosures were made of all the terms of this Order, and (4) request such
 18 person or persons to execute the "Acknowledgment and Agreement to be
 19 Bound" that is attached hereto as Exhibit A.
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21 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 22 **PROTECTED MATERIAL**

23 A. When a Producing Party gives notice to Receiving Parties that certain
 24 inadvertently produced material is subject to a claim of privilege or other
 25 protection, the obligations of the Receiving Parties are those set forth in
 26 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
 27 to modify whatever procedure may be established in an e-discovery order that
 28 provides for production without prior privilege review. Pursuant to Federal

1 Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on
 2 the effect of disclosure of a communication or information covered by the
 3 attorney-client privilege or work product protection, the parties may
 4 incorporate their agreement in the Stipulated Protective Order submitted to
 5 the Court.

6 7 **XIII. MISCELLANEOUS**

8 **A. Right to Further Relief**

9 1. Nothing in this Order abridges the right of any person to seek its
 10 modification by the Court in the future.

11 **B. Right to Assert Other Objections**

12 1. By stipulating to the entry of this Protective Order, no Party
 13 waives any right it otherwise would have to object to disclosing or
 14 producing any information or item on any ground not addressed in this
 15 Stipulated Protective Order. Similarly, no Party waives any right to
 16 object on any ground to use in evidence of any of the material covered
 17 by this Protective Order.

18 **C. Filing Protected Material**

19 1. A Party that seeks to file under seal any Protected Material must
 20 comply with Civil Local Rule 79-5. Protected Material may only be
 21 filed under seal pursuant to a court order authorizing the sealing of the
 22 specific Protected Material at issue. If a Party's request to file
 23 Protected Material under seal is denied by the Court, then the
 24 Receiving Party may file the information in the public record unless
 25 otherwise instructed by the Court.

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1 **XIV. FINAL DISPOSITION**

2 A. After the final disposition of this Action, as defined in Section V,
3 within sixty (60) days of a written request by the Designating Party, each
4 Receiving Party must return all Protected Material to the Producing Party or
5 destroy such material. As used in this subdivision, “all Protected Material”
6 includes all copies, abstracts, compilations, summaries, and any other format
7 reproducing or capturing any of the Protected Material. Whether the
8 Protected Material is returned or destroyed, the Receiving Party must submit
9 a written certification to the Producing Party (and, if not the same person or
10 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
11 category, where appropriate) all the Protected Material that was returned or
12 destroyed and (2) affirms that the Receiving Party has not retained any copies,
13 abstracts, compilations, summaries or any other format reproducing or
14 capturing any of the Protected Material. Notwithstanding this provision,
15 Counsel are entitled to retain an archival copy of all pleadings, motion papers,
16 trial, deposition, and hearing transcripts, legal memoranda, correspondence,
17 deposition and trial exhibits, expert reports, attorney work product, and
18 consultant and expert work product, even if such materials contain Protected
19 Material. Any such archival copies that contain or constitute Protected
20 Material remain subject to this Protective Order as set forth in Section V.

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1 B. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or
3 monetary sanctions.

4 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

5 Dated: June 6, 2024

KIRAKOSIAN LAW, APC

7 By: /s/ Gregory L. Kirakosian

8 Gregory L. Kirakosian

9 Attorneys for Plaintiff
10 JOSEPH DAVIS

11 Dated: June 6, 2024

BURKE, WILLIAMS & SORENSEN, LLP

13 By: /s/ Lisa W. Lee

14 Susan E. Coleman
Lisa W. Lee

15 Attorneys for Defendants
16 RAYMOND ROSAS, JESSE CARDELLA,
17 GERARDO DIAZ, CORY MILLESON
AND JOSE OUINONES

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20 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

22 Dated: June 6, 2024

23 
24 Honorable Douglas F. McCormick
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under penalty of perjury that I have
 read in its entirety and understand the Stipulated Protective Order that was issued by
 the United States District Court for the Central District of California on [DATE] in
 the case of *Joseph Davis v. Raymond Rosas, et al.*, Case No. 2:24-cv-2165-AB-
 DFM. I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is subject
 to this Stipulated Protective Order to any person or entity except in strict compliance
 with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print or type
 full name] of _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed Name: _____

4 Signature: _____

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